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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

MICHAEL IZELL SEALS,

Plaintiff,

v.

OFFICER RODNEY K. MITCHELL, et al.,

Defendants.

CASE NO. C-04-3764 NJV

**PLAINTIFF MICHAEL IZELL SEALS'S
NOTICE OF MOTION AND MOTION *IN LIMINE*
NO. 5 TO WEAR CIVILIAN
CLOTHES AND TO APPEAR WITHOUT
RESTRAINTS AT TRIAL**

Pre-Trial Conference Date: March 15, 2011
Time: 2:30
Place: Eureka Courthouse - 205A, 2nd Floor

The Honorable Nandor J. Vadas
Trial Date: May 10, 2011

NOTICE OF MOTION

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Plaintiff Michael Izell Seals by and through his attorneys of record moves for an order allowing Mr. Seals, an inmate at Pelican Bay Prison, to appear at his May 10, 2011 jury trial in civilian clothes and in the absence of physical restraints. Good cause exists to grant the motion because Mr. Seals would be unfairly prejudiced if he appeared at his jury trial constrained and in his prison uniform.

This motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities, the accompanying declaration of Ashley M. Bauer, all matters of which this Court may properly take judicial notice, any argument heard on this motion, the pleadings and papers filed herein, and all other matters properly before the Court.

Dated: February 23, 2011

Respectfully submitted,

LATHAM & WATKINS LLP
Alfred Pfeiffer
Ashley M. Bauer
Rahul Kolhatkar
Christopher J. Carlberg

By: /s/Ashley M. Bauer
Ashley M. Bauer
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion *in limine* seeks an order allowing Plaintiff Michael Izell Seals, who is currently incarcerated at Pelican Bay State Prison, to appear at his May 10, 2011 jury trial in civilian clothes and in the absence of physical restraints. To the extent that Mr. Seals is required to be restrained during trial, Mr. Seals requests that every attempt will be made to prevent the jury from viewing him in shackles, leg irons, handcuffs, or similarly restrictive devices. If, for example, the courtroom is configured in such a way that his feet will be seen by the jury, Mr. Seals requests a scrim or other means of obstructing the jury's view of any required leg restraints. Mr. Seals requests that his hands not be cuffed or otherwise restrained while the jury is present and that he be allowed to write notes to his counsel during the proceedings. This motion is necessary because both Mr. Seals's prison uniform and the use of physical restraints will prejudice his case and prevent Mr. Seals from obtaining the fair trial to which he is entitled.

II. DISCUSSION

A. Requiring Mr. Seals to Appear Before the Jury in a Prison Uniform Will Be Unfairly Prejudicial.

This Court has discretion to allow Mr. Seals to appear at trial in clothing other than his state-issued prisoner uniform. *Estelle v. Williams*, 425 U.S. 501, 504-05 (1976) (finding that where an objection is made, the court may permit an inmate to attend trial in civilian clothing); *see also* 15 Cal. Code Reg. § 3030(e) (2010) ("Inmates transported for appearance in court shall wear clean state-issued clothing, *unless otherwise ordered by the court.*") (emphasis added).

Even if the jury is permitted to know that Mr. Seals is currently incarcerated, an order permitting him to wear civilian clothing is nonetheless necessary.¹ It has long been recognized in criminal suits "that an accused should not be compelled to go to trial in prison or jail clothing because of the possible impairment of the presumption so basic to the adversary system." *Estelle*, 425 U.S. at 504. "This is a recognition that the constant reminder of the accused's

¹ Mr. Seals has also filed a motion *in limine* to preclude any reference to the fact that he is currently incarcerated.

condition implicit in such distinctive, identifiable attire may affect a juror's judgment. The defendant's clothing is so likely to be a continuing influence throughout the trial that . . . an unacceptable risk is presented of impermissible factors coming into play." *Id.* at 504-05; *see also Duckett v. Godinez*, 67 F.3d 734, 747 (9th Cir. 1995) ("It is clear that a court cannot, without violating the Due Process Clause, compel an accused to wear identifiable prison clothes during his trial."). In line with this reasoning, federal courts in California have ordered custodians of prisoners who are plaintiffs in civil lawsuits to permit the prisoners to wear civilian clothing at trial. *See, e.g., Meeks v. Parson*, Case No. 1:03-CV-06700-LJO-GSA PC, Order Permitting Plaintiff to Wear Civilian Clothes at Trial, Docket No. 145 (E.D. Cal. filed Jan. 7, 2010) (attached as Declaration of Ashley Bauer I.S.O. Pl.'s Motions *in Limine*, Ex. 11) ("While the cases addressing the undue influence of a party wearing civilian clothes, as opposed to jail clothing during trial, have addressed the issue where a defendant was being tried for criminal offenses, parallels in the potential negative affect on a juror's judgment are easily drawn where an inmate is pursuing claims for violations of his civil rights while incarcerated.").

Here, a prison uniform will unduly prejudice Mr. Seals without serving any compelling purpose. It will distract the jury and taint their assessment of his claims and credibility. Mr. Seals alleges that his Constitutional rights were violated by two Lake County deputies. Defendants will likely dispute Mr. Seals's testimony, and the jury will need to weigh the testimony of Defendants' witnesses against that of Mr. Seals. A prison uniform would impair the jury's ability to fairly assess Mr. Seals's credibility. As such, in the interest of a fair trial, Mr. Seals respectfully requests that the Court exercise its discretion and allow him to appear before the jury in civilian clothes.

B. Mr. Seals Does Not Require Physical Restraints, which Are Inherently Prejudicial.

Mr. Seals also moves for permission to appear at trial before the jury without physical restraints, including shackles or handcuffs. "[S]hackling, like prison clothes, is an indication of the need to separate a defendant from the community at large, creating an inherent danger that the jury may form the impression that the defendant is dangerous or untrustworthy." *Rhoden v.*

Rowland, 172 F.3d 633, 636 (9th Cir. 1999). Further, “[b]ecause visible shackling during trial is so likely to cause a defendant prejudice, it is permitted only when justified by an essential state interest specific to each trial.” *Id.* (internal citations omitted). The Constitution forbids the use of visible shackles during the guilt and penalty phase in a criminal case unless the use is justified by essential government interests. *See Duckett*, 67 F.3d at 748. Although the right to appear before a jury free of shackles is not absolute, “[s]hackling is inherently prejudicial,” and the decision to present an individual to the jury in shackles should be considered carefully. *Id.* In fact, “[b]ecause of the potential for prejudice . . . due process requires that shackles be used only as a last resort.” *Id.* (internal citations omitted).

In the context of civil suits, courts have also acknowledged that shackling may infringe on a plaintiff’s right to a fair trial and have required an individualized determination of the need for restraints. *See, e.g., Tyars v. Finner*, 709 F.2d 1274, 1284-85 (9th Cir. 1983) (unconstitutional to compel the subject of a civil commitment hearing to wear physical restraints at trial); *Duckett*, 67 F.3d at 748 (“[C]ourts have held that when an individual’s level of dangerousness is a question the jury must decide in a civil proceeding, it is a violation of the right to a fair trial to compel that individual to appear before the jury bound in physical restraints.”); *Lemons v. Skidmore*, 985 F.2d 354, 356-58 (7th Cir. 1993) (impermissible to shackle plaintiff prisoner in a civil rights action alleging excessive force by corrections officers noting, “[t]he shackles suggest to the jury in a civil case that the plaintiff is a violent person.”).

There is no need to restrain Mr. Seals. Mr. Seals is fifty years old and of slight build at 5’11” and 170 pounds. Moreover, he is the only inmate who will be present at trial. Accordingly, the courtroom security officers would be able to properly address any hypothetical threat that Mr. Seals might pose. Shackles are painful (particularly when worn all day during trial), unnecessary, a distraction for the jury, an inhibition on Mr. Seals’s ability to communicate with counsel, and inherently prejudicial.

Mr. Seals therefore respectfully requests that the Court allow him to appear before the jury without any visible physical restraints, including handcuffs, manacles, shackles, and all similar devices.

1 **III. CONCLUSION**

2 For these reasons, Mr. Seals respectfully requests that this Court grant this Motion and
3 issue an order allowing Mr. Seals to appear in civilian clothes and without physical restraints at
4 his civil jury trial, beginning May 10, 2011. A proposed order will be filed concurrently with
5 this motion.

6 Dated: February 23, 2011

Respectfully submitted,

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8 LATHAM & WATKINS LLP
9 Alfred Pfeiffer
10 Ashley M. Bauer
11 Rahul Kolhatkar
12 Christopher J. Carlberg

13 By: /s/Ashley M. Bauer
14 Ashley M. Bauer
15 Attorneys for Plaintiff
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